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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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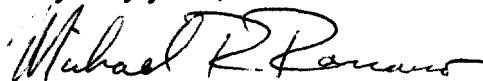
**Re: MCI Telecommunications Corporation Petition for Rulemaking -- Billing and
Collection Services Provided By Local Exchange Carriers for Non-Subscribed
Interexchange Services, RM 9108**

Dear Mr. Caton:

Pursuant to the Commission's June 25, 1997 Public Notice in the above-referenced matter, enclosed for filing are an original and four (4) copies of the Comments of Telco Communications Group, Inc.

Please date-stamp the enclosed extra copy of these Comments and return it to the undersigned via our messenger. If you should have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,



C. Joël Van Over
Michael R. Romano

Counsel for Telco Communications Group, Inc.

Enclosures

cc: Bryan Rachlin
International Transcription Service
Darius B. Withers, Common Carrier Bureau (w/diskette)

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Before the
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

MCI TELECOMMUNICATIONS CORPORATION)

RM-9108

Billing and Collection Services Provided)

By Local Exchange Carriers for Non-Subscribed)

Interexchange Services)

COMMENTS OF TELCO COMMUNICATIONS GROUP, INC.

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Dated: July 25, 1997

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SUMMARY OF COMMENTS

In its comments, Telco supports the MCI Petition and urges the Commission to initiate a rulemaking to re-evaluate the jurisdictional basis for regulating LEC provided billing and collection services to unaffiliated IXC's. Based upon marketplace changes occasioned by the Telecommunications Act of 1996, and specifically the entry of local exchange carriers into long distance markets, it is essential to require nondiscriminatory access to LEC provided billing and collection services under Title I or Title II. Just as the Commission has required nondiscriminatory access to billing name and address (BNA) information, validation and screening information and joint use calling cards, the Commission should now extend this access to LEC billing and collection services.

Because local exchange carriers enjoy effective monopoly control over the billing and collection of non-presubscribed long distance service, they must not be permitted to provide billing and collection services to themselves or to their affiliated interexchange carriers ("IXCs") unless or until they provide the same service to any requesting IXC. Further, local exchange carriers must be required to provide nondiscriminatory access on reasonable terms to all requesting IXCs currently, because their monopoly control threatens to chill existing competition, by substantially raising their rivals costs of providing non-presubscribed as well as presubscribed long distance services. To accomplish this goal, certain local exchange carriers have refused to enter into reasonable billing and collection agreements, canceled or declined to renegotiate expiring agreements, or have imposed "take it or leave it" contractual provisions that will substantially raise the cost of providing non-presubscribed and

presubscribed long distance services.

Finally, Telco urges the Commission to take an active role in promoting the development of LEC toll clearinghouses to assure that non-presubscribed calls do not become "uncollectables" as CLECs enter the market.

TABLE OF CONTENTS

SUMMARY OF COMMENTS	ii
COMMENTS OF TELCO COMMUNICATIONS GROUP, INC.	1
I. STATEMENT OF INTEREST	2
II. BACKGROUND	2
A. The 1986 Deregulation of LEC Billing and Collection Services	2
B. The Telecommunications Act of 1996 Changes The Competitive Role of Billing and Collections Services	6
III. BILLING AND COLLECTION SERVICES MUST BE OFFERED ON A NONDISCRIMINATORY BASIS	9
A. Non-presubscribed Interexchange Service	9
1. LECs Are Positioned to Leverage Their Billing and Collections Monopoly	9
2. There Is No Competitive Alternative to LEC Billing and Collections	10
3. Direct Billing Is Not Economically Feasible, Even With Access to BNA	11
B. Presubscribed Long Distance Service	13
IV. CONCLUSION	14

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COMMENTS OF TELCO COMMUNICATIONS GROUP, INC.

Telco Communications Group, Inc. and its subsidiaries ("Telco"), by undersigned counsel, hereby files comments pursuant to the Public Notice issued by the Federal Communications Commission ("Commission") on June 25, 1997, concerning MCI Telecommunications Corporation's ("MCI") Petition for Rulemaking regarding local exchange carrier billing and collections services.

Telco supports MCI's petition requesting the Commission to initiate a rulemaking toward crafting a reasonable rule to assure nondiscriminatory access to LEC provided billing and collection services. Telco further suggests that the proposed rulemaking be expanded to consider nondiscrimination standards for billing and collections to presubscribed long distance carriers. Finally, Telco further urges the Commission to undertake an investigation¹ to determine the extent to which effective competition exists in billing and collections and the extent to which incumbent

¹ See 47 C.F.R. §§ 1.401, 1.430.

local exchange carriers ("ILECs") continue to control elements of billing and collection and are in a position to leverage this control as they seek to enter interexchange markets.

I. STATEMENT OF INTEREST

Telco is a publicly traded holding company. Telco, together with its subsidiaries, is one of the nation's ten largest providers of long distance service. Its wholly-owned subsidiaries, Dial & Save and Long Distance Wholesale Club offer interexchange service throughout the United States. These subsidiaries derive more than 90% of their revenues from their 10XXX 1 + long distance service offerings. Most of their 10XXX customers are residential customers. Dial & Save also provides presubscribed long distance service to business and residential customers.

II. BACKGROUND

A. The 1986 Deregulation of LEC Billing and Collection Services

In 1986 the Commission deregulated billing and collection services by local exchange carriers.² The Commission did so based largely upon the dramatic marketplace changes occasioned by AT&T's divestiture of the Bell Operating Companies and the termination of AT&T's partnership agreements with other local exchange carriers. Before divestiture, local exchange carriers performed billing and collection services for their own long distance partner/affiliate, AT&T. After divestiture, the local exchange carriers continued to bill AT&T's

² *Detariffing of Billing and Collection Services*, 102 FCC.2d 1150 (Jan. 29, 1986). In that order, the Commission defined billing and collections as including: recording IC message, detail aggregating the details to create individual messages, (a completed call originated by an IC's end user), applying the IC's rates to such messages, processing these rated message into customer invoice form, mailing bills, collecting payments, accepting customer deposits, handling customer inquiries and investigating billing evasion activities.

long distance service, but were no longer billing and collecting for their own affiliated service offering when they billed end users for AT&T services.

The Commission framed its Billing and Collection Order, based upon this local versus long distance service market dichotomy. First, the Commission found that “billing and collections for a communications service that the LEC offers individually or as a joint offering with other carriers is an incidental part of a communication service.” However, the Commission distinguished billing and collections for the offering of another unaffiliated carrier, finding that billing and collection services in this instance “is not a communication service for purposes of Title II of the Communication Act.”³

Based upon these findings, the Commission concluded that billing and collection services provided to IXC by LECs are not subject to regulation under Title II of the Communications Act,⁴ but the same services, when offered in conjunction with a telecommunication service by the LEC itself or LEC affiliate is subject to Title II regulation.

Although the Commission found that it retained ancillary jurisdiction to regulate billing and collection services to interexchange carriers under Title I of the Communications Act, the Commission declined to exercise its jurisdiction at that time.⁵ The Commission explained the

³ *Id.* at ¶ 30.

⁴ *Id.* at ¶ 34.

⁵ Significantly, the Commission did exercise its Title I jurisdiction over the billing and collections recording function for a transition period by requiring LECs to offer a call detail recording service through 1989 or until the equal access conversion process permitted inter exchange carriers to obtain call detail directly. Thus the Commission held: “Although this service will not be tarified after 1986, the LECs will be required to offer reasonable terms for

exercise of its Title I jurisdiction must be based upon "a record finding that such regulation would 'be directed at protecting or promoting a statutory purpose.'" ⁶ The Commission found no such statutory purpose at that time, concluding that:

. . . because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection service for an indefinite period.

Finally, although the Commission also declined at that time to regulate the provision of billing name and address (BNA) information by LECs, the Commission stated:

. . . we would consider requiring carriers to make this information available to interexchange carriers if problems develop. We fully expect local exchange carriers to make BNA information readily available at reasonable prices, and we will not hesitate to take appropriate action if these concerns are not met. ⁷

Significantly, as competitive conditions changed, the Commission re-evaluated the role of BNA. In its BNA Order, ⁸ the Commission found that the provision of BNA information is a

this service. We are imposing these requirements pursuant to our Title I powers *in order to ensure that interexchange carriers will be able to provide their communications in an efficient and economical manner.*" Id. at ¶ 46 (emphasis supplied).

⁶ Id. at ¶ 37 (citing *Second Computer Inquiry*, 77 FCC.2d 384, 433 (1979), *aff'd on recon.* 84 FCC.2d 50, 92-93 (1980), *aff'd* 693 F.2d 198 (D.C. Cir. 1982), *cert. denied* 461 U.S. 938 (1983)).

⁷ *Billing and Collection Services*, 1 FCCR 445, ¶ 13 (Memorandum Opinion and Order, Nov. 6, 1986).

⁸ *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd at 4478 (1993) (BNA Order).

communications common carrier service subject to tariffing and to the Commission's Title II jurisdiction. The Commission later clarified that the provision of a customer's BNA information to its presubscribed carrier is required by [the Commission's] "equal access rules."⁹ In that Order, the Commission also expressly addressed the provision of BNA to interexchange carriers providing 10XXX 1 + calls. The Commission explained:

. . . we now conclude that a LEC may disclose BNA information associated with 10XXX 1 + calls. This BNA information may be disclosed to the IXC carrying those calls whenever the customer chooses to use that IXC rather than the one to which the originating loop is presubscribed. The act of dialing 10XXX, like the acts of using a calling card or accepting a collect call, implies that the calling party has agreed to pay the charges imposed by that IXC for that call, and thus that the caller has agreed to BNA disclosure for purposes of receiving a bill for that call. Accordingly, we do not interpret our rules to preclude disclosure of BNA for 10XXX 1 + calls.

Id. at ¶ 41.

Further, in the LEC Calling Card Order and the recent reconsideration of that order, the Commission required LECs offering a joint use calling card to provide nondiscriminatory access to card-validation and screening data.¹⁰ The Commission found that validation and screening services are incidental to the provision of local exchange access service, and are a prerequisite to

⁹ *BNA Order, Third Order on Reconsideration*, 11 FCCR 6835, ¶¶ 34, 40 (Feb. 9, 1996).

¹⁰ *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478 (1993) (BNA Order).

interstate collect and third party calls in addition to joint use calling card calls.¹¹ The Commission also required any LEC entering into an agreement with one interexchange carrier to honor its calling card to agree to honor calling cards from any other IXC requesting an agreement.

B. The Telecommunications Act of 1996 Changes
The Competitive Role of Billing and Collections Services

As the Commission did when it undertook a review of BNA and calling card validation of screening services, it should now find that LEC provided billing and collection services are incidental to local exchange access service, and must be provided under reasonable terms, and on a nondiscriminatory basis to all requesting IXCs. Indeed, this result is mandated by the Telecommunications Act of 1996 (the "Act").

The Act's overriding purpose is to engender enduring competition in local exchange markets and promote increased competition in interexchange markets.¹² As the Commission has noted, "the Telecommunications Act of 1996 fundamentally changes telecommunications regulation."¹³ While much of the new regulatory imperative has been focused upon assuring effective competition in local markets, it is equally important to assure that incumbent LECs do not leverage their control over aspects of the local exchange market as they enter long distance markets. If the Commission does not act to assure nondiscriminatory access to LEC billing and collections services in the long distance market, as it has done in the local markets by finding that

¹¹ *Reconsideration*, 1997 W.L. 18044 (FCC Jan. 17, 1997).

¹² *Interconnection Order*, 11 FCCR 15499, ¶ 3 (Aug. 8, 1996).

¹³ *Id.* at ¶ 1.

OSS services, *including the billing and collection functions*, are network elements, LECs will leverage their competitive advantage against competing IXC.

Several changes occasioned by the Act make a re-examination of billing and collection services by ILECs critical. First, and perhaps most importantly, ILECs will be entering interexchange markets.

This market change reverses the market structure the Commission relied upon when it deregulated billing and collections in 1986. Thus, the jurisdictional dichotomy established in 1986, whereby billing and collections is subject to Title II regulation when provided in conjunction with a service offered by the LEC or a LEC affiliate but not when billing and collections is offered to an IXC, is no longer sound.

As the Commission recognized in the LEC Calling Card Order, if a LEC favors one interexchange carrier over another, the competitive impact is significant. In that order, the Commission therefor found that if a LEC enters into an agreement to honor one IXC's credit card, it must honor calling cards from other IXCs as well. This rule should extend equally to billing and collections. If a LEC provides billing and collections for its own interexchange services, it should provide the same service on a nondiscriminatory basis to any requesting IXC.

Additionally, until LECs have entered long distance markets, and nondiscrimination rules are tested, LECs must be required to provide reasonable access to billing and collection services for all requesting IXCs on a nondiscriminatory basis. This is necessary to assure that LECs do not disadvantage their would-be-IXC-competitors by raising their billing and collection costs now, in anticipation of LEC entry into these markets.

In summary, just as the Commission has determined that operations support services, including billing and collections, are network elements in the local exchange market, it must now take a similar step in the newly competitive interexchange markets. In the new competitive marketplace, LEC provided billing and collection services to interexchange carriers must be considered an operational support service incidental to exchange access. Without this designation, the local exchange and interexchange markets will remain artificially bifurcated, and the only carrier able to offer seamless service, at least for many years, will be the incumbent LEC.

Second, as competitive local exchange carriers ("CLECs") enter the market, every indication suggests that most CLECs will be unable to provide billing and collection services to interexchange carriers, or may be unwilling to provide these services, at least in the beginning. Without CLEC billing and collection agreements however, many non-presubscribed calls will not be billable. Thus, the Commission must take the lead in assuring that LEC billing and collection clearinghouses develop to prevent the collapse of nonpresubscribed interexchange services during the transition to local exchange competition. All LECs must be required to provide real time access to pre-call validation information and to provide information to toll clearinghouses so that all long distance calls may be billed and so that every interexchange carrier may offer both presubscribed and non-presubscribed long distance service economically and efficiently.

The Act specifically provides the tools to assure that LEC clearinghouses emerge. The Act contemplates industry coordination "to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks." 47 U.S.C. § 256(a)(2). The Act further grants the Commission

an important role in assuring that this statutory purpose is achieved. As the Act states:

[t]he Commission shall establish procedures for Commission oversight of coordinated network planning by telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service;

47 U.S.C. § 256(b)(1). Telco urges the Commission to take an active role to assure that local and long distance carriers fully consider reasonable options for the clearinghouse coordination required for the billing and collection of nonpresubscribed calls.

III. BILLING AND COLLECTION SERVICES MUST BE OFFERED ON A NONDISCRIMINATORY BASIS

A. Non-presubscribed Interexchange Service

1. LECs Are Positioned to Leverage Their Billing and Collections Monopoly.

ILECs have an effective monopoly over billing and collections for non-presubscribed long distance calls, including 10XXX 1 +, collect, third party, LEC joint use calling card, and 900 service calling. An IXC cannot bill for these calls directly because, although the IXC's network carries the calls, the IXC does not have a pre-existing subscription relationship with the customers to be billed for these calls. In order words, the IXC has no billing information.

IXC's carrying non-presubscribed interexchange calls must therefore rely upon the LEC-provided billing and collection. Since 1986, when the Commission ordered detariffing of billing and collection services, LECs have provided billing and collection services to IXCs for non-presubscribed calls under contractual arrangements. Under these arrangements, the IXC provides Automatic Number Identification ("ANI") and call rating information to the appropriate LEC. The

LEC includes these charges with its local telephone bill, collects these charges, deducts its billing and collections fee, and remits the balance to the IXC.

2. There Is No Competitive Alternative to LEC Billing and Collections

There is currently no realistic billing and collection alternative for non-presubscribed calls. The only theoretical alternative, direct billing by the IXC, is cost prohibitive. Unassailable facts support this conclusion.

First, non-presubscribed customers take advantage of their ability to use various carriers. While this flexibility benefits consumers, it raises the likelihood that direct bills for these calls will not be paid. A customer may use one or more IXCs for their long distance calling using 10XXX access, they may use 1-800-Collect (MCI) OR 1-800-Call-ATT (AT&T) for some collect calling or use third party billing for other calls. As a result, one customer may use two, three or even ten long distance providers in a one month period, making only one or two calls on a particular IXC network during a particular billing period.

Thus, without LEC billing for non-presubscribed calls, the consumer who desires the advantages of 10XXX, collect calling or third party billing could receive three, five or more separate invoices per month, depending upon the individual consumer's calling pattern. Because these invoices typically contain charges for one or only a few calls, the consumer often considers them a nuisance. As a result, an IXCs bad debt will inevitably escalate. As Ron Evans, an OAN Services, Inc. representative reported at the Commission's recent Billing and Collections Forum, billing and collections clearinghouses that have experimented with direct billing have discovered extremely low collection rates: "A fifty percent collection rate is considered very good, and that's

obviously not something that could keep any carrier in business.”¹⁴

Second, if an IXC was forced to bill its 10XXX customers directly, it would incur significant capital costs to purchase or upgrade its billing system, it would have to purchase BNA, typically on a per call basis at LEC tariffed rates ranging from \$0.20—\$0.80 per query, it would have to hire additional personnel to perform the billing and collections function, it would incur the costs of paper, envelopes and postage, and, as noted, its bad debt ratio would increase dramatically.

Because of these additional costs, the IXC would be forced to raise its rates to levels that would no longer be competitive. The effect would be unmistakable: only LECs, or the largest IXCs able to operate certain lines of business at a loss would be able to offer 10XXX and other non-presubscribed service. The universal “competitive” 10XXX service consumers have come to expect would be an ironic casualty of the Telecommunications Act of 1996.

3. Direct Billing Is Not Economically Feasible, Even With Access to BNA

The assertion that the availability of BNA enables IXCs to bill non-presubscribed customers is wrong. The availability of BNA is but one small component of the billing and collections process. Because the average monthly billing to a non-presubscribed customer is typically small, the cost of BNA, added to the other high fixed costs associated with direct billing simply make it economically impractical to bill for these calls except through the LEC. As MCI notes in its petition, its average monthly invoice for non-presubscribed calls is only \$6.82. MCI further estimates that its cost to invoice these non-presubscribed customers would average \$3.47

¹⁴ *Transcript of Public Forum on Local Exchange Carrier Billing for Other Businesses*, June 24, 1997, at 16 of 66 (the “Billing and Collection Forum”).

per invoice. Telco's estimates are consistent with MCI's. Telco's average residential 10XXX customer places between 8-12 calls per month using Telco's long distance service. The average per call charges are \$1.25. Telco estimates that its costs per invoice may be somewhat higher than MCI's. Moreover, Telco's profit margin is lower than MCI's as Telco must generally price its service lower than MCI to be competitive. It is thus clear that the economics of direct billing decisively preclude it.

As Rochester Telephone Company's Gregg Sayre aptly summarized at the Commission's recent Billing and Collection Forum:

If we don't have a billing and collection contract with a particular carrier, the question is, what are they going to do? The carrier can always block things like casual calling, or third number traffic, if they don't have an arrangement pre-existing with the end user. The carrier can always just let the message fall on the floor because there just aren't enough of them to make billing them worthwhile. I don't think either of those two alternatives are particularly acceptable to most long distance carriers, and probably not good business practice, and so I am not proposing either of them. But, they do stand out there as alternatives.¹⁵

If IXCs are deprived of LEC billing and collections for non-presubscribed calls, or if LECs impose unreasonable terms and rates, or if LECs discriminate in favor of their own IXC businesses, the impact will be devastating to all non-LEC IXCs. However, this anticompetitive impact will be felt most heavily by smaller IXCs that are competitive only by virtue of their relatively low overheads, by IXCs that offer non-presubscribed services principally or exclusively, and by IXCs that market heavily to residential customers, where noncollectables are highest.

¹⁵ *Transcript of Public Forum on Local Exchange Carrier Billing For Other Businesses*, June 24, 1997 at 7 of 66.

B. Presubscribed Long Distance Service

Many large and small IXCs rely upon LEC billing and collections for their presubscribed long distance service, under the same billing and collections services agreements that provide for LEC billing of non-presubscribed calls. These IXCs prefer LEC billing because it is cost efficient, it satisfies strong consumer preferences for one consolidated local and long distance bill, and because the collection rate exceeds 90% when billing is consolidated.

As LECs prepare to enter the long distance market, they are becoming more aware of the advantages they will enjoy if they perform billing and collections only for themselves. Emerging LEC billing and collection practices reflect this.

Various LECs have announced their desire to cease billing and collection for unaffiliated IXCs, others have announced that they will not renegotiate existing contracts, while others have announced onerous contract provisions or significantly raised contractual fees on a *take it or leave it* basis. Whether LECs refuse to provide billing and collection services at all, or provide them in a manner that raises an IXC's costs beyond those reasonably related to services the LEC actually provides, the anticompetitive effect is the same.

Without timely action by the Commission, the trend will continue, and LECs will proceed as they always have to leverage their control over essential functions. While IXCs' vulnerability in the billing and collection services area is greatest in the non-presubscribed services market, it extends to the presubscribed long distance services market as well.

The Commission cannot "wait and see" what means the LECs ultimately select to disadvantage their IXC competitors in the billing and collections area. Many IXCs would be out

of business within months if one major LEC terminates its billing and collections agreements.

IV. CONCLUSION

LEC entry into interexchange markets fundamentally changes LEC economic incentives in billing and collections for IXCs. The basic factual premise that rationalized the Commission's deregulation of billing and collection in 1986 — that LECs no longer provided billing and collection services for an affiliated IXC — has vanished. LECs are again preparing to provide billing and collections services for their own long distance services, just as they did for AT&T. These services must now be provided under the discipline of reasonable nondiscrimination rules, just as exchange access must be provided on a nondiscriminatory basis to LEC-affiliated and non-affiliated IXCs.

Respectfully submitted,



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Dated: July 25, 1997

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